



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 25, 1992

Ms. Helen L. Campbell
Commissioner
Office of Fire Fighters'
Pension Commissioner
3910 South IH-35, Suite 235
Austin, Texas 78704

Letter Opinion No. 92-54

Re: Whether members of the Huntsville Volunteer Fire Department are excepted from coverage under the Fair Labor Standards Act, title 29 of the United States Code section 203(e)(4)(A) and related questions (ID# 16344)

Dear Ms. Campbell:

You have requested our opinion regarding the status of the Huntsville Volunteer Fire Department (hereafter the "HVFD").

The HVFD operates under a document denominated POLICIES AND PROCEDURES FOR CITY OF HUNTSVILLE PART-TIME/VOLUNTEER FIRE-FIGHTERS (hereafter "POLICIES AND PROCEDURES"), which has been adopted by the City Council of Huntsville. One of its provisions declares:

Part-time fire fighters will receive a \$10.00 per call as a nominal fee and as reimbursement for the use of personal vehicles, cleaning and replacement of personal clothing soiled or torn during use at a fire call or drill and other such expenses.

POLICIES AND PROCEDURES § 1(c)(34) (General Rules)(1992). The HVFD also participates in the volunteer fire fighters' relief and retirement fund pursuant to article 6243e.3, V.T.C.S. That statute defines "qualified service" as "fire-fighting service rendered without monetary remuneration while a member [of a volunteer fire department]." V.T.C.S. art. 6243e.3, § 1(1). Service in a volunteer fire department is "without monetary remuneration" if it encompasses only the benefits provided by article 6243e.3, and reimbursement for expenses. It is less clear

whether a volunteer fire department which pays its members a 'nominal fee' may participate in a fund created by article 6243e.3.

On the other hand, for payroll purposes, the City of Huntsville apparently considers members of the HVFD to be "employees," and it deducts federal withholding tax from the checks issued to the members. Finally, the Fair Labor Standards Act provides:

The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if --

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

29 U.S.C. § 203(e)(4)(A).

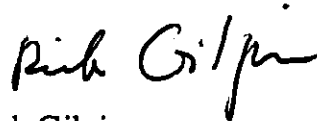
The POLICIES AND PROCEDURES document refers to the \$10.00 remuneration as *both* a "nominal fee" *and* as "reimbursement for expenses," without indicating which portion of the remuneration is attributable to expenses and which to compensation. Under federal law, *supra*, a volunteer fire department may offer retirement benefits, reimbursement for expenses, *and* a nominal fee per fire, without coming within the ambit of section 203(e)(4)(A) of the Fair Labor Standards Act.

It is clear from these various statutes and regulations that the members of the HVFD are "volunteers" for some purposes, and "employees" for other purposes. You do not indicate the context in which you are asking the question. In addition, the issue is too fact-bound, e.g., the allocation of the \$10.00 remuneration to "expenses" or "nominal fee," for us to be able to give you a clear legal answer. We can tell you, however, that the POLICIES AND PROCEDURES of the HVFD would more closely comport with *state* law, V.T.C.S. article 6243e.3, if the \$10.00 stipend were attributable *only* to reimbursement for expenses.

S U M M A R Y

Members of the Huntsville Volunteer Fire Department are excepted from coverage under the Fair Labor Standards Act of title 29 of the United States Code section 203(e)(4)(A). We cannot say as a matter of law whether the department fully complies with article 6243e.3, V.T.C.S., since it is unclear what portion of the "\$10.00 per fire" remuneration is attributable to reimbursement for expenses, and what portion can properly be deemed a "nominal fee."

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Gilpin", with a stylized flourish at the end.

Rick Gilpin
Deputy Chief
Opinion Committee